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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/683,939

10/10/2003

Frank S. Maggio

066-0003

3891

67413

7590

01/29/2009

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EXAMINER

CHORNESKY, ADAM B

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

01/29/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/683,939	Applicant(s) MAGGIO, FRANK S.	
	Examiner ADAM CHORNESKY	Art Unit 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 79-142 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 79-142 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. The following is in response to the amendment received September 18, 2008, where claims 1-78 were cancelled, and claims 79-142 were added.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 79-106, and 123-131, drawn to a handheld remote control device that interacts with broadcast content and tunes to a station channel.
 - II. Claims 107-111, drawn to a system for interacting with broadcast content that is broadcast from one or more broadcast networks.
 - III. Claims 112-117, drawn to a method for interacting with broadcast advertising content using a handheld remote control device, classified in class 340, subclass 426.13.
 - IV. Claims 118-122, drawn to a method for presenting a query corresponding to broadcast content broadcast to a plurality or recipients via one or more broadcast networks that include television networks, cable television network, satellite television network, radio network, and satellite radio network, classified in class 348, subclass 461.
 - V. Claims 132-137, drawn to a method for remotely tuning a broadcast receiver to receive broadcast content being broadcast from one or more broadcast networks such as television, cable television, radio, satellite radio, classified in 455, subclass 151.1+.

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VI. Claims 138-142, drawn to a method for capturing audience share information for broadcast content using handheld remote control devices, classified in class 455, subclass 2.01.

3. The inventions are distinct, each from the other because of the following reasons:

4. Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I does not require a method for interacting with broadcast advertising content using a handheld remote control device as in invention III. See MPEP §806.05(d).

5. Inventions I and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I does not require a method for remotely tuning a broadcast receiver as in invention V. See MPEP §806.05(d).

6. Inventions I and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I does not require a method for capturing audience share information for broadcast content using handheld remote control devices as in invention VI. . See MPEP §806.05(d).

7. Inventions II and III are related as a combination drawn to a subcombination. The subcombination of invention III is a specific case of the subcombination of invention II. In the instant case, invention II is a system for interacting with broadcast content that is

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broadcast from one or more broadcast networks. Invention III identifies specific aspects of interacting with broadcast advertising content by using a handheld remote control device. See MPEP §806.05(c) and MPEP §806.05(j).

8. Inventions II and IV are related as a combination drawn to a subcombination. The subcombination of invention IV is a specific case of the subcombination of invention I. In the instant case, invention II is a system for interacting with broadcast content that is broadcast from one or more broadcast networks. Invention IV identifies specific aspects of interaction by presenting a query corresponding to broadcast content broadcast to a plurality or recipients via one or more broadcast networks. See MPEP §806.05(c) and MPEP §806.05(j).

9. Because these inventions are distinct for the reasons given above and the searches are distinct, and because they have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

10. Applicant is advised that in order for the reply to this requirement to be complete, it must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

11. Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to ADAM CHORNESKY whose telephone number is (571)270-5103. The examiner can normally be reached on Monday - Thursday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on 571-272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A. Chornesky
January 22, 2009

/Jean Janvier/
Primary Examiner, Art Unit 3688